DOCUMENT RESUME

ED 187 636 CS 205 720

AUTHOR Pullen, Rick D.; Rasmussen, Pat
TITLE The Stark Reality of the 1977 California Education Code and Student Press Freedom.
PUB DATE Aug 80
NOTE 18p.; Paper presented at the Annual Meeting of the Association for Education in Journalism (63rd, Boston, MA, August 9-13, 1980). Best copy available.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Freedom of Speech; *Journalism; Research; *School Law; *School Surveys; Secondary Education; State Legislation; *Student Publications; *Student Rights
IDENTIFIERS *California

ABSTRACT

This paper examines provisions of California's new Education Code that secure freedom of expression for official student publications and require that school districts adopt written publications codes providing boundaries of content, distribution, and appeals processes. It then summarizes a survey indicating that a number of school districts in the state have not complied with the Code's mandates. In addition, it demonstrates that while school newspaper advisers continue generally to face pressures from other faculty members and from school administrators, a number of school districts have adopted guidelines that have aided journalism instructors in resolving such disputed. After a discussion of both the survey results and selected interviews with journalism instructors, the paper offers recommendations designed to assure that school districts comply with the new Education Code provisions. (Author/FL)

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THE STARK REALITY OF THE 1977 CALIFORNIA EDUCATION CODE AND STUDENT PRESS FREEDOM

By

Rick D. Pullen

and

Pat Rasmussen

California State University, Fullerton

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A paper presented to the
Secondary Education Division,
Association for Education in Journalism

Boston, Massachusetts
1980

CS205720

INTRODUCTION

Following a significant number of federal cases that upheld high school students' rights to publish and distribute periodicals on school campuses, California's legislature enacted legislation with guarantees of free expression for students, both at the school and community college levels. First enacted in 1971, the law went through tests by both courts and school administration edict. Such tests climaxed in the 1976 California Supreme Court's decision in Bright v. Los Angeles Unified School District,[1] which has interpreted these statutes as forbidding any prior censorship on grounds that state law and the U.S. Constitution prohibited such censorship. This case, however, did not involve an official student publication.

After the Bright decision, the legislature reacted to groups of high school journalism teachers that lobbied in Sacramento for an amendment to the 1971 Education Code. The journalism teachers got what they wanted, but it was a mixed blessing. Adopted in 1977, Education Code 48916 governing elementary and secondary school freedom of expression specifically includes official student newspapers, but it also reimposes prior censorship in several areas.

Thus, this paper will examine the provisions of the 1977 Education Code. Also, the paper will provide a summary of a 1979 study of 25 California school districts that determined whether administrators met the Code provisions, and finally the paper will report interviews with journalism teachers throughout the

state with respect to 1977 to 1979 "unreported" restraints on press freedoms by administrators in spite of the Education Code.

AMENDING THE CALIFORNIA STATUTE

Within a month of the 1976 Bright decision, State Senator Ralph Dills introduced legislation that would restore legislative authority for prior restraint. The amendment was attractive because it gave journalism teachers something they had been seeking for several years in California: a specific provision including official student newspapers within the safeguards of the Education Code. The teachers' groups felt that the provision for prior restraint in cases of libel, slander, obscenity, and material threatening a substantial disruption of school activities was a small price to pay for the specific language including their students' products within the law.[2]

The 1977 legislature's bill was by no means the first attempt to amend the Education Code to authorize prior restraint of student expression coupled with a provision to include "official student newspapers" within the law's specific coverage. In 1974, Assembly Bill 207 included substantially the same provisions, as did Senate Bill 2120 in 1976.

Assembly Bill 207 passed the California Assembly and was sent to the Senate on May 12, 1975. It received a "do pass" recommendation from the Senate Education Committee, but was defeated 20-11 on the Senate floor on August 14, 1975. After a motion to reconsider, it was amended in minor ways and brought to another Senate vote on August 11, 1976, failing 21-17.

In each instance, AB207 stirred opposition from both liberals (who regarded the prior censorship provisions as

unconstitutional and unconscionable) and from conservatives (who predicted profanity-filled student newspapers should the measure pass).

A new bill introduced in 1976, SB2120, got only as far as the Senate floor where it failed on a 17-17 tie vote. So when the 1977 bill was scheduled for Senate floor consideration, backers were concerned about its chances. The California high school teacher lobby groups were able to get support for the bill and it was adopted in 1977. (see Appendix 1)

The first paragraph of the new law differs little from its predecessor and the equivalent community college law (Education Code section 76120). The main change was to include "official publications," including those financially supported by the school, among the forms of student expression covered by the law.

The second paragraph of the new law requires each school district and each county board of education to adopt a written publications code, something many school systems have not done at this writing (to be discussed later).

Perhaps the most significant changes come in the third and fourth paragraphs of the new law, where the roles of student editors and "journalism advisers" are defined. The editors are responsible for assigning and editing the copy. The advisers are given three specific responsibilities: (1) to "supervise the production of the student staff;" (2) to "maintain professional standards of English and journalism;" and (3) to "maintain the provisions of this section." That latter assignment should

prove difficult for journalism teachers since it means they must assure that nothing gets into print which is obscene, libelous, or likely to inspire unlawful acts or disruptions on campus.

The fourth paragraph takes direct aim at the Bright decision and overrules its prohibition on prior censorship in the public schools. It says there shall be no prior restraint of "material prepared for official school publications" except if it is libelous, obscene, or likely to cause rulebreaking or campus disturbances. That seems to force the journalism teacher to make complex legal decisions and decide when censorship is necessary.

In its final paragraph the new law says school officials must promptly justify any controls they place on student written expression, and authorizes school districts to place whatever limits they wish on oral expression by students.

As this new law made its way through the legislature, it was opposed by the American Civil Liberties Union, which warned that it creates very serious constitutional problems. Its supporters, particular groups of high school journalism teachers, conceded that it was a compromise on freedom of the press, but argued that it was much better than no statutory law on the subject. They said a specific statutory law, even an imperfect one, would be better than the broad principles of First Amendment theory, which school officials often chose to ignore until hauled into court.

Ultimately, the new law probably will be tested in court, inasmuch as it does authorize more stringent prior censorship of student publications than most courts have permitted in recent years.

IMPLEMENTION OF THE EDUCATION CODE

California has more than 1100 school districts. It would be a difficult task to collect information from each district regarding whether the Education Code is being followed. Thus, data regarding implementation of the Code were gathered through a survey of 50 randomly selected districts. Twenty five surveys were sent to schools in Southern California, 15 to Northern California, and 10 to Central California. Twenty five surveys were returned, including one that was blank because Proposition 13 cutback was responsible for killing the journalism program.

The analysis was done simply on an item basis using the total number of responses per question. Some questions were answered in more than one category, hence a discrepancy in the tally. Twenty one surveys were received from Southern California, two from Northern California and one from Central California.

Of the 24 responses, 63 percent (15) said they had a copy of the Education Code section 48916. Thirty eight percent (9) said they did not have a copy. Twelve respondents answered that they were very familiar with the contents of the code, ten were somewhat familiar, and two were not familiar with the code.

In addition, 55 percent (13) said their school district had established a publications code as mandated by the legislation. Some 45 percent have yet to establish such guidelines. One respondent indicated that guidelines existed on the campus, but a copy had never been given to the journalism teacher.

Of the respondents that had no guidelines for the district, the adviser plays an important part in selecting the content of

of the student newspaper. Content was decided by students 40 percent of the time, by advisers 45 percent, faculty five percent, and by the administration 10 percent. However, many respondents checked multiple items on this particular question suggesting that both students and advisers decide the paper's content. Nevertheless, advisers are playing a definite part in determining the contents of student newspapers in California. Content input from the administration, however, is negligible.

Slightly less than 50 percent of the school responding said that no publications' guidelines had been established. Most schools have no appeals procedure for students who wish to defend their censored articles (64 percent). However, 36 percent indicated that they had some sort of appeals procedure which involved discussions with the staff, school personnel and parents when censorship problems arise.

Advisers working without guidelines are influencing the type of material published in the school newspaper. Some 58 percent of those responding said they had forbade student articles to be published during the 1978-79 school year. The same number had referred articles to the administration for approval prior to publication. The same number of advisers had been verbally questioned about the content of the articles published in the paper by school officials. However, only one respondent indicated that the school administration had asked to stop publication of any article. Based on this sample, censorship of the student press in California may be coming from journalism advisers, especially those who are not knowledgeable about the Education Code.

Of those advisers who did have guidelines, some 40 percent did not include an appeals procedure for censored articles within the guidelines. Those who did have an appeals procedure said they created a publications or editorial board consisting of students, faculty, administrators, and parents to review questionable material. If no decision was reached by such a group, the material was then sent to the superintendent or board of education for a decision. Some districts sent the questionable material directly to the school board while others asked assistance from the school district's attorney, especially in cases of potential libel.

During the 1978-79 academic year, advisers reported that the above procedures had been used suggesting that staff members had solved their problems of taste before such matters became student-administration problems. Therefore, respondents could not judge the effectiveness of their guidelines since those with recent editions had not been put to test. However, 46 percent indicated they thought their guidelines were effective, and 54 percent said they were somewhat effective.

Based on this study, there seems to be no real problem of censorship or prior restraint on state public school campuses except in the areas of altering copy or verbal harassment by the administration. But problems of censorship are not serious in the 24 school districts which responded to the survey. Such data may reveal that the guidelines, once established, are working, and that where no guidelines exist, administrators are aware of the 1977 Education Code.

Districts without guidelines indicated that advisers are acting as self-appointed censors in determing what type of material will be printed in the school paper and are being questioned by administrators about the paper's content. Most of those who responded to the survey indicated that advisers feel comfortable in dealing with press controversies with school officials.

One adviser made this additional comment about the student press on his/her questionnaire:

> I am very familiar with the legislation pertaining to the question, but am not fully in agreement with it. I will not publish something in the newspaper just because the yearbook staff rejected it. That is ridiculous. Nor am I going to involve my school board in any hassle which can easily be handled at my level. Simply stated, if the staff members choose to not accept the benefit of my experience (which is extensive) and judgment on a critical issue, they can find someone else to set the type and whatever else I do aside from pure 'advising.'[3]

Such comments illustrate the fact that teachers are well aware of the difference beteeen what the law says and the reality of interpreting the law on the high school campus.

Another adviser, who was threatened with a new assignment she might not like the following year if a story was not killed wrote:

> I'm no martyr. I spent years building a journalism program at another school only to have it die when I left because problems between the administration and new adviser arose. I'm getting too old for that type of controversy.[4]

Of course, advisers are well aware of reprisals that can result if they carry student causes too far.

And yet another adviser who violated the Education Code

after the principal willfully censored the newspaper said:

> I knew he'd (the principal) let the paper die (if court litigation was instituted). I also knew that taking the case to court might mean years before a decision was made. I didn't want to see the paper die in that time.[5]

And so the journalism teacher must face the stark reality of what enforcing the laws of the state can mean in terms of job security and administrative reprimands. It appears that the biggest threat to securing First Amendment freedoms for student journalists today is not an over-zealous principal but rather an uninformed or insecure journalism adviser.

UNREPORTED 1979 PRESS CONTROLS

Many student press controversies never reach the courts. High costs, time restraints, and lack of commitment to the cause may be reasons why students and advisers permit censorship in the state schools. Pressure on the student press may come from teachers, student groups, principals, and superintendents, each wanting to control the press.

For purposes of this study, a number of selected advisers were contacted to discuss their difficulties with groups or individuals that attempted student press control in violation of the 1977 state Education Code. Several were willing to openly discuss their difficulties while others request that they remain anonymous.

As mentioned earlier, censorship of the student press may come from faculty members in the form of intimidation. However, in this instance it was not the journalism adviser who imposed restraints. An illustration of how teachers intimidate the

student press occurred at Burbank High School during the 1978-79 school year. The adviser reported that an auto shop teacher used his "physical bulk" to intimidate an editor, a small young woman, into giving his program coverage. At that same school, coaches were said to be outspoken concerning the student press and coverage of their athletic programs. Also, the Associated Student Body (ASB) council tried to pressure the Burbank High School press and said the council could determine what is and what is not news. An altercation arose after an editor asked the ASB adviser why some students were permitted schedule changes and some not. The student press wanted to do an editorial on the matter, but the ASB adviser did not want the information to go to the student press. "The adviser told me that this (the matter) is nothing to write a story in the school paper about," the newspaper adviser said.[6]

In another situation, a journalism adviser reported that in order to show dislike for the student press campus personnel refused to be interviewed or to answer questions about matters, thereby making it virtually impossible to cover a story. The adviser, as well as the student reporters, generally got the "silent treatment" from faculty members. Worse yet, advisers and newspaper staff received verbal reprimands from school officials. The program adviser reported that the newspaper had endured such a poor relationship with the school superintendent and school board with respect to "hot news" items that the paper intends to take out libel insurance and hire an attorney to assist with advice concerning controversial stories.[7]

Another 1979 prior restraint issue involved Hughson Union

took office, she stopped the procedure for a short time. But after the second issue for that school year, the principal demanded to review copy prior to publication. The principal told the adviser in a letter:

> I will exercise my right as a principal to review and if necessary delete anything that might be classified as libelous, off-colored, derogatory or which in some manner may have the effect of defaming the school. Therefore, you will submit all publications to me prior to going to print from this time forward.[9]

Both the teacher and the principal were aware of the Education Code, but the principal did not seem to care about the provisions. "They knew what they were doing. It was all up front," the adviser said. Later, other items were censored from stories, yet the principal permitted the publication of a liquor store ad and the review of the Rocky Horror Picture Show, which deals with homosexuality.

That year, the journalism teacher at the high school was given six preparations including two simultaneous classroom assignments. Today, the adviser has chosen not to teach.[10]

Intimidation of the school press and adviser may be less obvious than the above situation. For example, this citation appeared in the board of education minutes in February 1979:

> In a statement directed to an article which appeared in the February 9 issue of the (student newspaper) Mr. X (board member) said that he feels it is marvelous that the high school students have their say; that it is their right to speak out and say what they feel and believe without having pressure put upon them; that there are places in the state where high school administrators try to censor student publications and obviously, it is not happening at (school). Mr. (X) described the article as excellent, well written, but noted that it does contain some

High School in Hughson, California. The paper, which had received Quill and Scroll top honors, was ordered to stop distribution of an issue because the issue contained an article involving the resignation of over 25 percent of the teaching staff, including the principal.

The principal approached the journalism adviser and demanded confiscation of all copies of the newspaper which was to be distributed that day, without giving the adviser reasons for doing so. "He did talk to me in a loud voice for a number of minutes at the door of a classroom about 'being sick of yellow journalism' and about my negligence as an adviser," said the teacher, who had advised the paper for 11 years. The papers were returned to the instructor by the principal the next morning after a regular board of education meeting the night before. The principal told the instructor that he was instructed to return the papers to her. The paper was distributed one week later.

The adviser contends that the incident was brought about for a number of reasons. One reason was that she had become a member of the certificated staff's negotiation team. She also said that the local press covered the matter concerning the confiscation of papers which she supposed caused unhappiness of the school administrators. To date the school district had not adopted press guidelines as mandated by the 1977 Education Code.[8]

In another controversy, a principal ignored the state code and demanded prior review of newspaper copy. "I knew it (the prior review) was illegal," said the adviser, but fearing reprisals, she complied with the request. When a new principal

> inequities. Mr. (Z) added that responsible journalism is important and suggested that the author of the article pull upon his own peers, who have attended many more board meetings than author, for the straight facts before writing raw and far-reaching statements about the board of education. Furthermore, Mr. (Z) hopes that students who have attended many meetings will find it within themselves to come back with a responsible piece of journalism.[11] (emphasis added)

The article mentioned in the minutes referred to an editorial which accused the board of education of acting like demi-gods, unapproachable by the public and uninformed about the school district's needs. The reporter had attended five board meetings prior to writing the article and had confirmed that at all five meetings, board members verbally intimidated any community member who spoke against the board's wishes.

These incidents indicate that although the California student press does have freedom accorded by the Education Code, it still endures prior restraint and censure from school officials who wish to control the content of publications. Advisers endure such actions fearing reprisals in the form of poor teaching assignments, transfers, or contract termination. Some advisers, who have taken their cases to court, find that legal red tape may tie up their cause in court for many years.

CONCLUSIONS

Since the adoption of California Education Code section 48916, official school newspapers have gained specific protection: that mandated by law rather than by the somewhat vague First Amendment. In addition, student newspapers gained added protection via mandated provisions of the Code that require school districts to prepare guidelines that clearly spell out proper

methods of distribution, appeals procedures, and kinds of content in keeping with school regulations. Such guidelines provide students with boundaries acceptable to both them and the administration. If the guidelines are not acceptable, students may seek a hearing to determine whether they are in keeping with the Education Code.

However, even with the Code, school administrators and newspaper advisers in California have not worked together to incorporate guidelines. The study of 24 school districts show that nearly 50 percent have not written guidelines for student newspapers. Thus, the gains made by enactment of the 1977 Code have been negated by lack of action on the part of school administrators and advisers.

Through interviews with California teachers, it is apparent that administrative and district personnel continue to censor the press in California even though they know they are violating legal mandates. Some districts have censored by questioning the journalism adviser's judgment. And some administrators have threatened to cut funding to the student press in an attempt to control content of the press. And the district may censor by transferring the adviser to a less desirable position.

Censorship of the student press continues today not only in California but across the nation. Well over 300 cases per year are reported to the Student Press Law Center (SPLC) in Washington, D.C.[12] Although California lawmakers have provided a tool by which greater press freedom can be attained, little has been done to insure that this tool be used. Perhaps the State Board

of Public Instruction should lead the way in making certain guidelines are being established at the school district level in compliance with the state's Education Code. As mentioned earlier, many state educators have virtually ignored the problems of school press censorship. Leon Letwin, attorney for a California student press case, sent letters of inquiry to the county councils of the 58 counties in California to ascertain whether guidelines had been established for the student press in each district. Some 22 letters were returned. The analyzed responses indicated that:

> 1. Although section 10611 (48916) requires implementing regulations, many school districts have adopted none.
> 2. Where regulation has been adopted, it has frequently been done without assistance of the formal legal adviser to the school board.
> 3. Almost half of the 30 sets of regulations received from school districts substantially followed the proposed regulations of the School Personnel Committee of the California School Board Association, distributed in 1971.[13]

Some sort of follow-up procedure needs to be taken to remedy press censorship problems. Many districts are ignoring the Education Code and have not established publication guidelines, perhaps feeling that in ignoring the issue, they do not inhibit their power to censor.

ENDNOTES

[1]Bright v. Los Angeles Unified School District, 18 C.3d 450 (1976).

[2]Wayne Overbeck, "Protecting Student Press Freedom by State Law: The Experience in California," (unpublished paper) presented to the Secondary School Division, Association for Education in Journalism, Madison, Wisconsin, 1977. Also, Wayne Overbeck and Rick D. Pullen, Mass Media Law In California (Iowa: Kendall-Hunt, 1979), pp. 178-9.

[3]Response from survey from an anonymous journalism adviser, June 1979.

[4]Telephone conversation with a Southern California journalism teacher who requested to remain anonymous, June 1979.

[5]Telephone conversation with a Baldwin Park journalism adviser who requested to remain anonymous, July 1979.

[6]Skip Nicholson, former journalism adviser at Burbank High School, letter, July 1979.

[7]Telephone interview with journalism teacher from Upland, California who asked to remain anonymous, July 1979.

[8]Marjorie Brooks, journalism teacher, Hughson High School, letter sent July 7, 1979.

[9]Janis Frankel, former journalism teacher at Baldwin Park High School, telephone interview, July 17, 1979.

[10]Ibid.

[11]Board of Education minutes from Glendora Unified School District, Glendora, California, February 13, 1979.

[12]Lois Weiner, "Captive Voices: Are they still?" C:JET, 12 (Spring 1979), p. 4.

[13]Leon Letwin, "Regulation of Underground Newspapers on Public School Campuses in California," UCLA Law Review, 22 (1974-75), pp. 213-214.